

No. 9/5/84--6 Lab/3895. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Cast Master, Plot No. 46, Sector 6, Faridabad :—

BEFORE SHRI R.N. RATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 379/1982

between

SHRI MANGE RAM, WORKMAN AND THE MANAGEMENT OF M/S CAST MASTER, PLOT NO. 46, SECTOR 6, FARIDABAD

Present—

Shri Manohal Lal for the workman.

Shri K.P. Aggarwal for the Management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, to this Tribunal, between Shri Mange Ram, workman and the Management of M/s Cast Master, Plot No. 46, Sector 6, Faridabad, for adjudication :—

Whether the termination of service of Shri Mange Ram was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to both the sides. The workman in his claim statement, dated 12th November, 1982, alleged that he was employed as Die-maker and had been working for the last 4 years in this factory situated at plot No. 46, Sector 6, Faridabad and his last pay was Rs. 690 per month. It was then alleged that the workman was chosen as Secretary of the Union by the members of Cast Master Kamgar Union in December, 1981 and this fact was intimated to the Management, etc. It was further alleged that the Secretary of the Union was made a collective demand to the Management due to which the Management started harassing the workman and declared illegal lock out in the factory and retrenched the workman from 3rd June, 1982 which amounted to unfair labour practices. It was alleged that the order of termination was illegal and arbitrary and *malafide* and that the workman be reinstated with full back wages.

3. The management in their written statement, dated 30th November, 1982 pleaded that the workman was employed as Die-maker and the cast Master Kamgar Union had been de-registered. It was further pleaded that the demand notice was given by the workmen on 8th May, 1982 and discussions were held between the parties but no settlement had been arrived at and that the workers adopted to go slow tactics despite the fact that the Management explained to them regarding recession in the market etc. and that some workmen were charge sheeted and others were laid off without compensation. It was then pleaded that the Management did not declare any lock out in the factory but since the normal work was not given by the workmen for a long time and new orders were not in view during the recession period, the job of Die-maker became surplus because now die are not required by the Company and that list of seniority as required under the Punjab Industrial Disputes Rule, 1958 was pasted on 21st May, 1981 and the copy of the same was given to the Labour Officer-cum-Conciliation Officer, Faridabad. It was further pleaded that on 3rd June, 1982, notice pay as well as retrenchment compensation were offered to the workman but he refused to receive the same. It was sent by registered A.D. post on the same date. It was pleaded that the workman had been lawfully retrenched from the services of the Company according to Section 25F of the Industrial Disputes Act, 1947 and intimation to this effect was duly sent to the Government of Haryana in form 'P'. It was also pleaded that the workman was gainfully employed in service since his services from the Company.

4. The workman in his rejoinder, filed on 20th December, 1982, reiterated the plea taken in the claim petition.

5. On the pleadings of the parties, the following issue was framed :—

Whether the termination of services of Shri Mange Ram was justified and in order ? If not, to what relief is he entitled ?

6. It may be mentioned that the Management has examined one witness and documents Ex. M. 1 to M. 12 have been tendered into evidence. The workman has examined 3 witnesses and documents

Exhibit W-1 to W-3 have been tendered into evidence. After going through the evidence, both oral and documentary and hearing both the parties, my findings on the above issue is as under :—

Issue

7. The Management examined MW-1 Shri M. Sanchety, Chief Accountant of the respondent who stated that the workman was employed as Die-maker by the Management,—*vide* letter Exhibit M-1. He further stated that a demand notice was given by the workman on 8th May, 1982 to the Management which was discussed by both the sides, but no settlement could be arrived at, due to which the die-Casting Operators adopted go slow tactics. He further stated that the chargesheets, copies Exhibit M-2 to M-5 were served on some workmen and that some workers were laid off. He then stated that the settlement Exhibit M-6 took place and that the seniority list Exhibit M-7 was prepared and pasted in which the name of the claimant also appeared who was the only Die-Maker in the factory. He further stated that since new orders were not received, therefore the claimant who was Die-maker, became surplus and that he was retrenched but he refused to receive the amount of compensation, etc. which was sent him by post,—*vide* letters, Exhibit M-8 and M-9, and that the copy of the draft was Exhibit M-10. He further stated that conciliation proceedings Exhibit M-11 took place and that Exhibit M-12 was the report made by the Conciliation Officer. He further stated that no Die-maker was employed by the thereafter as there was no work in that respect.

8. Shri Mange Ram workman (WW-1) deposed that he was employed as Die-maker and that some other Die maker were also recruited but they left the service and that the Die fitters used to perform the jobs the Die Fitters as well as Die-makers alongwith him and they were junior to him. He further stated that the Management used to receive orders from Rajdoot, Bajaj, and A.P.I. factories. He then stated that he was elected as General Secretary of the Union and that Exhibit W-2 was the list of office bearers of the said Union and that Exhibit W-3 was the photo-stat copy of the proceedings held in that respect. He also stated that the demand notice Exhibit W-1 was given by him as General Secretary of the Union. He further stated that the production became less due to seasonal fluctuation, break down and absence of the workmen but not on account of go-slow tactics. He further stated that he alone was retrenched, while the junior workmen were still in service. He also stated that previously were 5 Die casting Machines and their number was increased to 6. He also stated that the Management was receiving orders regularly and that he was retrenched because he was the General Secretary of the Union. WW-2. Shri Bhan Chand, Die Fitter and W-3 Shri Balbir Singh, Turner stated that the claimant was a Die Maker in the factory.

9. The perusal of the above evidence would show that according to W-1 Shri M. Sanchety, Chief Accountant of the Management, the workmen adopted go-slow tactics, due to which some workers were laid off. He further stated that the settlement Exhibit M-6 took place and that the service of the present workman only was retrenched because there was no work for the Die maker. The seniority list Exhibit M-7 was prepared by the Management as per rules 76 of the Industrial Disputes Act, 1958 which show that there were eleven Die casting Operators, 4 Assistant Die casting Operators, 18 helpers Die Casting, one Die Maker, 3 Die Fitters and a large number of workmen were also employed in the factory, like Turners, Assistant turners, Welders, Shaperman, Helpers, Carpenter, Electrician helper store, etc. The chargesheets Exhibit M-2 to M-5 do not relate to the present workmen. Moreover the claimant has explained that production became less due to seasonal fluctuations, break down etc. Retrenchment notice Exhibit M-8 was sent to the present workman only on the ground that no new dies were required by the Management and as such the post of Die Maker had become surplus. The management has not placed on the file any documentary evidence to show that the orders were cancelled by Panjab, Rajdoot and A.P.I. factories. Moreover, if there was recession in the market, it cannot be believed that the same would have effected the claimant only, while a large number of other workmen as mentioned in the list Exhibit M-7 were not effected. The job of die maker is an important one because when the dies are not prepared, the question of fitting the same into machines does not arise. The claimant has deposed that the Die Casting Operators Fitters used to work alongwith him and prepared dies. Three dies Fitters have been mentioned in the list namely Shri Chaman Lal, Shri Khem Chand, and Shri M. Kunjpal and they were junior to the present claimant. It cannot be believed that the present claimant who was a Die-Maker, became surplus. If, in fact, there was recession in the market and orders had been cancelled by the other factories then a large number of the workers would have been effected. The present claimant was the General Secretary of the Union as per document. Exhibit W-3. He served the demand notice, copy Exhibit W-1, in that capacity. In the settlement Exhibit M-6, all the workmen except the claimant were given benefit, but regarding the claimant it was mentioned in para 9 that he shall not be taken back on duty. The present claimant was not bound by this settlement which took place on 30th June, 1982 because he was retrenched on 3rd June, 1982. The recital made in the document Exhibit M-6 was to the effect that the present claimant would not be taken back on duty while the remaining workmen were taken back on duty, goes to show that the claimant is rightly apprehending that he had been retrenched because he served the demand notice Exhibit W-1 on the Management as General Secretary of the Union. When six Die-Casting Machines are being operated in the factory it cannot be believed that the job of one Die-Maker became surplus. It is true that compensation etc. was offered to the workman,—*vide* letter Exhibit M-8 but draft Exhibit M-10 was sent by post,—*vide* letter Exhibit M-9 on the ground that the claimant had refused to take the amount. In the ruling reported as *Workmen of Suddar Workshop of Jorehaut Tea Co. Ltd., versus The Management of Jorehaut Tea Co. Ltd.* 1980-Lab, I, 742, it is laid that it is to be determined in each case whether the Management had acted fairly or not. The circumstance of the present case which have been discussed above in detail, go to show that the act of the Management in retrenching the present workman was not valid because no valid case for retrenchment of the

claimant has been made out. In the ruling reported as **Bombay Union of Journalists and others versus State of Bombay and another**, 1964-I-LLJ, 351, it is laid down that the provisions of clause (c) of Section 25F of the Industrial disputes Act, 1947 are directory in nature. In the present case, the Management has not placed the copy of form 'P' to show that the provision of clause (c) of Section 25-F of the Industrial Disputes Act, 1947 were complied with. This circumstance does not assume any importance because it has been found that no valid case for retrenchment of the present claimant has been made out. In the ruling reported as **Bangal Bhatdevi Coal Company and Ram Prakash Singh and others**, 1963-I-LLJ:-291, it is laid down that the fact that workman was office bearer of union would by itself be no evidence to prove victimisation. This ruling is distinguishable on facts because in the present case the claimant served the demand notice Exhibit W-1 as General Secretary. In the settlement Exhibit M-6 he was the only person who has retrenched, while a large number of workmen were not affected by the alleged recession in the market. Contents of the settlement Exhibit -M-6, therefore, go to show that the present claimant was retrenched because he served the demand notice as General Secretary on the Management. In the ruling reported as **Hindustan Machine Tools Ltd., Pinjore and State of Haryana and others**, 1975-II-LLJ, 195, it is laid down that where the dismissed employee was gainfully employed, onus shifted to the employee to prove his earnings. WW-1 Shri Mange Ram workman stated that he was doing work in the home as labourer. Submission was that the workman gainfully employed. The argument does not carry any weight because the claimant was a Die Maker and since he was retrenched, he was compelled to work as labourer in his home because otherwise he would have died as a result of starvation. If the claimant had been working as Die-maker in some other factory then it can be held that he was employed gainfully. In the ruling reported as **Indian Compressors, Makers Corporation, New Delhi versus D. D. Gupta and others**.-1977-Lab.-L.C. 694, it is laid down that where the offer of payment was refused by the workman and the amount was sent by moneyorder on the same date, the provisions of Section 25-F of the Industrial Act, 1947 had been complied with. In the present case, there is compliance with the provisions of Section 25-F(2) of the Industrial Disputes Act, by sending draft *vide* letter Exhibit M-9. This circumstance does not affect the present case because it has been found that the retrenchment of the claimant was not valid. In view of the foregoing discussion, it is held that termination of service of Shri Mange Ram by the management was not justified and in order, and as such he is entitled to reinstatement with full back wages. The award is passed accordingly.

The 26th May, 1984.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 394, dated the 30th May, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 5th July, 1984

No. 9/5/84-6Lab./4074.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/S Goodyear India Ltd., Mathura Road, Ballabgarh.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA
FRIDABAD.

Reference No. 248/81

between

SHRI NARINJAN SINGH WORKMAN AND THE MANAGEMENT OF M/S. GOODYEAR INDIA
LIMITED, MATHURA ROAD, BALLABGARH.

Present.—Shri Narinjan Singh, Workman, in person.

Shri O. P. Malhotra with Shri Sat Pal representatives, for the management.

AWARD

In exercise of powers Conferred by Clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, to this tribunal, between Shri Narinjan Singh Workman and the Management of M/s Goodyear India Limited, Mathura Road, Ballabgarh, for adjudication:—

Whether the termination of service of Shri Narinjan Singh was justified and in order? If so, what relief is he entitled?

Notices were issued to both the parties. In his claim statement dated 31st August, 1981, the workman alleged that he was engaged by the Management on 9th March, 1973 as an Electrician. It was also alleged that the workman was an active trade unionist at the core of his heart which the Management did not relish and invented a novel device of forcing unemployment upon the workman directing him to get himself medically examined and did not pay him the wages. It was further alleged that the workman had been visiting Doctors of E.S.I.C., Faridabad and that Dr. Manocha, Medical Refree found the workman fit, when the workman reported for duty but he was not allowed to join duty. It was alleged that the workman made a complaint to the Labour Inspector, Ballabgarh who asked the Management to take the workman on duty but the Management did not do so and ultimately terminated his service and further that the order of termination dated 13th March, 1981 was illegal, mala fide, against the principles of natural justice and in violation of the Certified Standing Orders. It was, therefore, prayed that the workman be reinstated with full back wages.

3. The Management in their written statement dated 23rd September, 1981 pleaded that the workman was employed as an Electrician in Engineering Division of the plant. His job required working in high tension voltage and low tension voltage controllers and that any slackness due to mental instability in the job of electrician could result in serious accident to the workman concerned as well as to other workmen working in the plant and major damage to the equipment. It was further pleaded that the general behaviour of the petitioner was not found normal and he appeared to be mentally unbalanced and on 4th August, 1980 he was examined by the Company Doctor, who expressed the opinion that the workman might be suffering from a degree of mental disorder which could endanger the safety of the plant and the persons at work in the establishment and as such the workman was directed by the Company on 7th August, 1980 to contact Medical Superintendent E.S.I. Hospital, Faridabad for medical examination and treatment and was informed that he would be allowed duty after he was declared fit to work. It was further pleaded that the workman remained admitted to the ESI Hospital, Faridabad from 11th August, 1980 to 16th August, 1980, when he was referred to Medical College, Rohtak, but he did not go there. It was further pleaded that in the meanwhile, the local office (ESI) referred his case to the Medical Refree who did not have the necessary background of the case and gave his opinion that the workman did not need abstention from work on which the Medical Officer, ESI Dispensary No. 5 issued a certificate in the printed form, and that the workman presented the medical certificate to the Management on 30th August, 1980. The Management wrote to Medical Superintendent ESI Hospital, Faridabad with a copy to Medical Refree/Medical Officer, ISIC Dispensary No. 5 to review the fitness of the workman and directed the workman on 31st August, to contact the Medical Superintendent ESI Hospital, Faridabad. It was pleaded that the Medical Superintendent informed the Management on 10th September, 1980 that the workman had been examined by the Specialist and had been referred to Medical College, Rohtak, for further medical examination, when the management addressed the letter dated 13th September, 1980 to the workman to contact Medical College Rohtak through Medical Superintendent ESI Hospital, Faridabad. It was further pleaded that the Management wrote the letter dated 24th September, 1980 to the workman in reply to his letter dated 17th September, 1980 addressed to the Labour Inspector and that the Management again directed the workman,—*vide* letter dated 8th October, 1980 to contact the Medical Superintendent ESI Hospital Faridabad. It was then pleaded that the correspondence took place between the parties in that respect when the workman was again directed to contact the Medical Superintendent in connection with the Medical examination at Medical College, Rohtak. It was pleaded that the management received letter dated 15th October, 1980 from the Medical Superintendent ESI Hospital, Faridabad directing the workman to appear before Dr. Subash Chander Kapoor, when the management wrote the letter dated 15th October 1980 to the workman who in his letter dated 20th October, 1980 stated that he could not go to any Doctor for further observation till fitness certificate given by the Medical Officer of ESI Dispensary No. 5 on the opinion of the Medical Refree was cancelled. The management again informed the workman on 22nd October, 1980 to contact the Medical Superintendent ESI Hospital, Faridabad. Mentioning therein that the workman's refusal to comply with the instruction of the Management would amount to willful disobedience of lawful and reasonable orders of the Management. It was then pleaded that the workman wrote the letter dated 24th October, 1980 reiterating his earlier contention and that Management on 1st November, 1980 again directed him to appear before Dr. Subash Chander Kapoor for observation. The workman in his letter dated 1st November, 1980 refused to do so. The Management wrote the letter dated 11th November, 1980, asking the workman to appear for his medical examination at Holy Family Hospital at New Delhi before Dr. Kothari on 14th November, 1980 but the workman did not appear. It was further pleaded that the workman was chargesheeted on 29th December, 1980 when

the workman submitted his reply dated 2nd January 1981, in which he stated that the Management had already terminated his service by its conduct and he expressed his inability to submit his explanation to the Chargesheet. The Management again wrote the letter to him dated 19th January, 1981 informing him that the assumption of the workman that his service had been terminated with effect from 30th August, 1980, was not correct but the workman in his letter dated 16th January, 1981, reiterated the position which was taken in his earlier letter. It was pleaded that since the workman refused to submit his explanation to the chargesheet, it was not possible to hold the domestic enquiry and the management dismissed the workman, *vide* order dated 13th March, 1981.

4. The workman in his rejoinder dated 6th October, 1981 reiterated the pleas taken in the claim statement.
5. On the pleadings of the parties, the following issue was framed on 19th November, 1981:—

Whether the termination of service of Shri Narinjan Singh was justified and in order ? If not to what relief is he entitled? (OPM)

6. It may be mentioned that the Management examined 6 witnesses and filed a number of documents. The workman appeared in the witness box and documentary evidence was filed by him. After going through the evidence, both oral and documentary, and hearing both the sides, my findings on the above issue are as under:—

Issue No. 1:

7. The Management has examined MW-1, Dr. S.N. Sharma, employed by the Management who deposed that it was reported to him that the claimant was behaving a bit abnormally, when he examined him and recommended that patient should be examined by the E.S.I. Doctors. He further stated in November, 1980 he was asked to contact Dr. K.K. Kohtari of Holy-Family Hospital and get appointment to examine the claimant and that on the appointed date the claimant did not turn up. MW-2 Shri S.R. Nandra, Manager Maintenance, stated that he noticed change in the behaviour of the claimant and got him examined from the Factory's Doctor who deposed that the workman should go to Medical College, Rohtak, MW-3, Dr. S. S. Manocha, Chief Medical Officer (Retired) and E.S.I. Medical Referee, stated that he kept the claimant under observation for about one and a half hours and had sent a copy of the letter, dated 20th August, 1980 because the case was referred to him by E.S.I. Local Officer and issued the Certificate M.W.-4 Dr. S.P. Tyagi, Medical Superintendent, E.S.I. Hospital had proved the documents Exhibit M-1 to Ex. M-6. He further stated that for leave, the E.S.I. Referee is the final authority. MW-5, Dr. R.K. Bansal, Medical Officer, E.S.I. Hospital, stated he had examined the claimant who was suffering at Hypomonia and remained admitted in the hospital, from 11th August, 1980 to 16th August, 1980. He further stated that he had referred the claimant to Medical College, Rohtak. MW-6, Shri K.L. Khurana, Manager Labour, stated that the behaviour of the claimant became abnormal, who was examined by the Company's Doctor and was then referred to E.S.I. Hospital. He further stated that the claimant was also referred to Medical College, Rohtak but he brought fitness certificate from the Medical Referee when the letter Ex. M-1 was written to him and thereafter a number of letters were also written to him by them asking the workmen to get himself examined from Medical College, Rohtak, Holy Family Hospital, New Delhi but he did not comply with the same. He further stated that the chargesheet was issued to the workman but it was not possible to hold domestic enquiry, and in view of the reply given by the workman, his services were terminated. Ex. M-7 is the letter dated 7th August, 1980 by which the workman was directed to contact the Superintendent, E.S.I. Hospital, Faridabad for medical examination. Ex. M-46 is the document, which shows that the workman remained admitted in E.S.I. hospital from 11th August, 1980 to 16th August, 1980 and was referred to Medical College, Rohtak, but he did not go there. This document also shows that the Local Officer of E.S.I. C. Dispensary referred the claimant to the Medical Referee who gave his opinion on 28th August, 1980 that the claimant did not need abstention from work which means that the claimant was fit to join duty on the basis of this certificate. E.S.I. Dispensary gave certificate on 30th August, 1980 regarding his fitness. Ex. M-8 is the letter dated 31st August, 1980 by which the Management directed to the workman to contact the Medical Superintendent E.S.I. Hospital, Faridabad. Ex. M-3 is the letter dated 10th September, 1980 by which the Medical Superintendent E.S.I. Hospital, Faridabad, informed the Management that the workman has been examined by the Superintendent Specialist and referred to Medical College, Rohtak. Ex. M-2 is the letter dated 11th September, 1980 sent by the Medical Referee asking the Management to direct the workman for examination. Ex-10 is the letter dated 13th September, 1980 sent by the Management to the workman asking him to go to Medical College, Rohtak for medical observation. Ex. M-11 is the letter dated 24th September, 1980 by which the workman was asked to go to Medical College, Rohtak by the Management. Ex. M-5 is the letter dated 3rd October, 1980 which the Medical Superintendent directed the Management to direct the claimant to appear before Dr. Subhash Chander Kapoor, Ex. M-12 is the letter dated 8th October 1980 by which the Management asked the workman to contact the Medical Superintendent E.S.I. Hospital. Ex. M-24 is the letter, dated 9th October, 1980, in which the workman stated that there was no need to go to Medical College, Rohtak. Ex. M-13 is the letter dated 11th October, 1980 by which the Management asked the workman to contact the Medical Superintendent in connection with medical examination at Rohtak. Ex. M-25 is the letter dated 13th October, 1980 in which the workman stated that in view of the fitness certificate given by the Medical Referee, he could not go to Medical College, Rohtak. Ex. M-14 is the letter dated 16th October,

1980 by which the management asked the workman to appear before Dr. Subhash Chander Kapoor. Ex. M-26 is the letter dated 20th October, 1980, in which the workman stated that till the certificate was not cancelled by the Medical Referee or Superintendent, E.S.I. Hospital, he could not go to Hospital. Ex. M-1 is the letter dated 22nd October, 1980, by which the Management asked the workman to appear before Shri Subhash Chander Kapoor. Ex. M-27 is the letter dated 24th October, 1980 by which the workman was asked by the Management to appear before Doctor Subhash Chander Kapoor. Ex. M-16 is also the letter dated 1st November, 1980, sent by the Management to the workman, asking him to appear before Dr. Subhash Chander Kapoor. Ex. M-17 is the letter dated 11th November, 1980, by which the Management asked the workman to appear before Dr. K.K. Kohtari in Holy Family Hospital, New Delhi for medical examination. Ex. M-28 is the letter dated 13th November, 1980 sent by the workman to the Deputy Labour Commissioner requesting him that he be allowed to join duty. Ex. 21 is the letter dated 18th November, 1980 by which the management asked the workman to go to Holy Family Hospital for medical examination. Ex. M-18 is the letter dated 19th November, 1980, sent by the Management to the workman for going to Holy Family Hospital, New Delhi. Ex. M-33 is the demand notice from the workman dated 18th November, 1980. Ex. M-44 is the letter dated 16th December, 1980 sent by the Deputy Labour Commissioner to the workman to the effect that no dispute existed. Ex. M-40 is the chargesheet sent by the Management to the workman on 29th December, 1980. Ex. M-41 is the reply given by the workman on 2nd January, 1981 to the said chargesheet. Ex. M-42 is the letter dated 10th January, 1981 sent by the Management to the workman asking him to submit his explanation. Exhibit M. 43 is the letter dated 16th January, 1981 sent by the workman to the Management in which the contention raised in letter Ex. M-11, was reiterated. Ex. M-43-A is the order dated 13th March, 1981, of dismissal of the workman. Ex. M-45 is the application under section 33(2)(h) of the Industrial Disputes Act, 1947 filed before the Tribunal by the Management.

8. The workman appeared as WWI and stated that no chargesheet was issued to him regarding his work and conduct till 7th August, 1980 and he was not examined by the factory's Doctor. He, however, stated that his brain never remained unbalanced nor his mind was dis-coordinated before or after issuance of the letter on 8th August, 1980. He further stated that he guided his fellow workmen in the activities of the union and complied with the lawful orders of the management by producing fitness certificate on 30th August, 1980 issued by the E.S.I. Doctor and that further asking of medical examination by the Management was an act of harassment and *mala fide* intention of the Management. He further stated that he was a qualified Electrician and could perform his duty with the same calibre and skill as was required by an Electrician and that he was not working anywhere these days since the date of termination of his service.

9. A perusal of the above evidence would show that the claimant was employed as an Electrician by the Management and it was alleged that his behaviour became abnormal. He was referred to E.S.I. Hospital for medical examination where he remained admitted from 11th August, 1980 to 16th August, 1980 and, thereafter, he was thus advised to go to Medical College, Rohtak. Evidence shows that Local Office E.S.I. Dispensary referred the claimant to E.S.I. Referee (MW-3) Dr. S.S. Manocha who examined the claimant on 28th August, 1980 and opined that the claimant did not need abstention from work which meant that the workman was fit to resume duty and thereon the Medical Officer, ESI Dispensary issued the certificate Ex. M-46 on 30th August, 1980. The Management however did not accept this certificate and desired that the workman should be got medically examined from Medical College, Rohtak or Holy Family Hospital, New Delhi. A number of letters were written by the Management in this respect which have been mentioned above in details and the plea of the workman was that since the fitness certificate issued by the E.S.I. Referee had not been cancelled either by the E.S.I. Referee or by the Medical Superintendent E.S.I. Hospital, therefore, he could not be sent for further examination. In reply to the chargesheet, the same plea was taken by the workman. It is true that in first instance, E.S.I. Doctors referred the case to Medical College, Rohtak, but thereafter the case was referred to Medical Referee by the Medical Officer E.S.I. C. Dispensary who declared the claimant fit to join duty. On the basis of the fitness certificate given by the Referee (Medical Officer E.S.I.C. Dispensary dated 28th August, 1980)/30th August, 1980, respectively, the Management was duty bound to permit the claimant to join duty since the certificate issued by the Medical Referee/Medical Officer E.S.I. C. Dispensary was not cancelled. Therefore, the Management had no right to chargesheet the claimant and dismiss him on 13th March, 1981. The stand taken by the claimant became reasonable because he was given the fitness certificate by the Medical Referee/E.S.I. C. Dispensary. Under all the circumstances, the impugned order passed by the Management dismissing the claimant was illegal. It may be mentioned that the management has placed reliance on the ruling reported as *Shankar Chakravarti versus Britania Biscuit Ltd. and another, 1979-Lab. I. C. 1192*, it is laid down that if there is no pleadings there is no question of proving something which is not pleaded. This ruling is distinguishable on facts because the claimant has based his claim on the fitness certificate given by the Medical Referee/Medical Officer E.S.I.C. Dispensary, which has not been cancelled. The other ruling reported as *M/s Bharat Kala Kendra Private Limited versus R. K. Baweja and an other 1981-Lab. I. C. 893*, in which it is laid down that order of termination of services is not *mala fide* where an employer does not want to continue an employee, whose shows consistent indifference to work and discipline and gets annoyed when he is asked to give an explanation. This ruling is also distinguishable on facts because in the present case the Management failed to accept the fitness certificate produced by the claimant.

10. In view of the foregoing discussion, it is held that termination of service of the workman by the Management was not justified and in order. The issue is decided accordingly. Consequently the workman is reinstated and would be entitled to full back wages. It may however, be mentioned that if at any time the

Management feels that medical certificate issued by the Medical Refree/Medical Officer E.S.I. C. Dispensary needs cancellation, it can move the concerned authorities to take necessary steps in this respect according to rules and the matter will be re-considered by the concerned authorities on merits after examining the claimant. The award is passed accordingly.

Dated 1st June, 1984.

R.N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 410, dated 4th June, 1984

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab./4078.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of Chief Engineer (Thermal Plant) H.S.E.B., Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 95/81

between

SHRI CHINTA LAL WORKMAN AND THE MANAGEMENT OF CHIEF ENGINEER
(THERMAL PLANT) HARYANA STATE ELECTRICITY BOARD, FARIDABAD

Present :—

Shri S.S. Gupta, for the workman.

Shri Narinder Pal Singh, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following disputes between Shri Chinta Lal workman and the Management of Chief Engineer (Thermal Plant) Haryana State Electricity Board, Faridabad, to this Tribunal, for adjudication :—

Whether the termination of services of Shri Chinta Lal was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the sides. The demand notice dated 7th January, 1981 was treated as claim statement as per request of the claimant, in which it was alleged that he was employed as T. Mate, Rigger and Fitter from 1971-72 and his work and conduct was satisfactory but his services were terminated in January, 1978 illegally and *malafide*, due to which he was entitled to reinstatement with full back wages.

3. The Management, in their written statement dated 27th May, 1981, pleaded that the reference was bad in law on account of delay etc. It was further pleaded that the claimant was employed as fitter on work charged basis on the construction of Unit No. 2 of Thermal Project, Faridabad, and he left the services of his own accord during the year, 1975. It was further pleaded that the construction work was completed in February, 1976 when the services of surplus staff were terminated and if the claimant had reported back before February, 1976, his services too would have been terminated alongwith others.

4. The claimant in rejoinder dated 9th July, 1981, reiterated the pleas taken in the claim statement.

5. On the pleading of the parties, the following issues were framed on 10th July, 1981 :—

- (1) Whether the reference is bad on account of delay and laches ? OPM.
- (2) Whether the termination of service of Shri Chinta Lal was justified and in order ? If not, to what relief is he entitled ?

6. It may be mentioned that the management was examined one witness and attendance register has been filed. The workman has appeared in the witness box. After going through the evidence and hearing both the sides, my findings on the above issues are as under :—

Issue No. 1 :

7. It was argued on behalf of the management that the claimant left the service in 1975 but he filed demand notice on 7th January, 1981 and due to this delay, the reference was made bad. In the ruling reported as **H.M. Vankata Chiliah V. State of Mysore and another**, 1970-Lab. I.C. 501, it is laid down that the delay in presenting the application did not justify refusal of the Government to make the reference. In the ruling, reported as **Nityananad M. Joshi and another V. The Life Insurance Corporation of India and others**, AIR-1970 Supreme Court-209, it is laid down that the application under section 33-C(2) of the Industrial Disputes Act, 1947 could not be held to be barred under Article 137 of the Constitution. In the ruling reported as **B. R. Harnam Mohatta (India) Private Limited, V. The Seventh Industrial Tribunal, West Bengal and others**, 1977-Lab. I (H.O. 514 (CAD)) it is laid down that there is no period of limitation provided under Section 10 of the Industrial Disputes Act, 1947. Consequently, on the ground of delay, the reference is not bad. The issue is decided accordingly against the management.

Issue No. 2 :

8. The management has examined MW-1 Shri O.P. Verma, Executive Engineer, Thermal H.S.E.B. Panipat, who stated that he remained posted as Assistant Executive Engineer, at Faridabad Thermal Project from 1970 to September, 1976 and that the claimant used to work as Fitter under him. He further stated that the claimant worked there till December, 1975 and thereafter he left the job and did not turn up. He further stated that the claimant was not retrenched, but he left the service of his own accord. The attendance register maintained by the Thermal Project authorities has been produced. Shri Chinta Lal workman WW-1 stated that on 17th January, 1976 he proceeded on 8 days leave and came back after six days but his presence was not marked and he was not taken on duty, nor any compensation was paid to him.

9. The testimony of Shri O.P. Verma MW-1 is clear on the point that the claimant worked under him upto December, 1975 and thereafter he left the job of his own accord and did not turn up. MW-1 stated that he remained posted at Faridabad upto September, 1976 and that the workman did not come back. The entries in the attendance register show that the name of the present workman was struck off due to long absence. The plea taken by the Claimant that he proceeded on 8 days leave and was not taken back on duty cannot be accepted because no such leave application has been got produced. Moreover, if the claimant was not being allowed to join duty in January, 1976, he must have filed an application with the Management or Labour Officer/Labour Inspector. On the other hand, the claimant remained silent and filed the demand notice on 7th January, 1981 i.e. after expiry of the period of about 5 years. The evidence of the Management, therefore, goes to prove that the workman left the service of the Management in January, 1976 of his own accord. Moreover, the construction work was completed in February, 1976 and if the workman had reported himself for duty, he would have been retrenched in February, 1976 alongwith other workmen.

10. It may be mentioned that the representative of the management placed reliance on the rulings reported as **Hindustan Steel Limited and State of Orissa and others**, 1977-I-LJ page 1, **Santosh Gupta versus State Bank of India**, 1980-II-LJ-72, **Assistant Personnel Officer, Southern Railway Olavakkot K.T. Antony**, 1978-II-LJ-254, **State Bank of India versus N. Sundaramoney**, 1976-I-LJ-page 478, **The Executive Engineer, Electrical Division, Nagpur and another V. Prakash Devidas Kalsait**, 1983-Lab. I-C-1627, **Cammon India Limited versus Niranjan Dass**, 1983-Lab. I-C-1865, **Ithad Motor Transport (P) Ltd., and Bir Singh and others**, 1974-II-LJ-243, **P. Prabhakaran and others versus General Manager, Kerala State Road Transport Corporation and another**, **F.I.R. 1981(42)-113 and Mohan Lal versus Bharat Electronic Limited**, 1981-II-I-LJ-70 which deal with the provisions of Section 25-F of the Industrial Disputes Act, 1947. These rulings do not help the workman being distinguishable on facts because in the present case, it has been proved that the claimant left the service of the management of his own accord in January, 1976.

In view of the foregoing discussion, it is held that the act of the Management in terminating the services of Shri Chinta Lal workman was justified and in order. The award is passed accordingly.

Dated 4th May, 1984.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 418, dated the 6th June, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.